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Joint written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status, the Lawyers' Rights Watch Canada, the Lawyers for Lawyers, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Wrongful Prosecution and Imprisonment of Lawyers in the Islamic Republic of Iran

Lawyers Rights Watch Canada (LRWC), Lawyers for Lawyers (L4L) and the Asian Legal Resource Centre (ALRC) call on the United Nations Human Rights Council to take action to stop the wrongful prosecution and imprisonment of lawyers in the Islamic Republic of Iran (Iran) and ensure remedies of release and reparation for victims of arbitrary detention.

As a member of the United Nations and a state party to the ICCPR,[1] Iran has legal obligations to ensure to all individuals within its territories and subject to its jurisdiction the rights and freedoms guaranteed by, *inter alia*, the ICCPR to equality (Article 7, 2, 10), liberty (Article 3), expression (Article 19), association and assembly (Article 20), as well as freedom from arbitrary detention (Article 9), remedies for violations (Art. 8) and the right to legal representation (Art. 14(3)). Discharge of these obligations entails ensuring the right to legal representation,[2] which the Human Rights Committee (HR Committee) has determined applies to both criminal and civil proceedings.[3] The state's specific duty to protect the personal and professional safety of lawyers is integral to compliance with duties to ensure rights, prevent violations and ensure access to remedies.

The United Nations *Basic Principles on the Role of Lawyers* (Basic Principles)[4] describe specific state duties widely accepted as necessary to ensuring rights to legal representation, by protecting lawyers from interference by state and other actors. State compliance with the *Basic Principles* is a fundamental pre-condition to independent legal representation, which is essential to ensuring equal and effective protection and enforcement of rights and access to remedies for violations.

Iran has failed both to fulfil these obligations and to cooperate with investigation and reporting that could lead to improved compliance. Requests by the Special Rapporteur on the Independence of Judges and Lawyers to visit Iran in 2006, 2008 and 2011 have been refused.[5]

In violation of the obligation to protect rights to legal representation and the rights of lawyers to engage in legal advocacy, Iran has, *inter alia*:

1. subjected lawyers to politically motivated prosecutions and to arbitrary detention for exercising protected freedoms of expression and association and for carrying out their legitimate legal work;

2. carried out reprisals against members of the Defenders of Human Rights Center (DHRC) for their peaceful human rights advocacy;

3. denied to imprisoned lawyers medical attention and access to legal representation; and

4. carried out reprisals against lawyers representing members of minority.

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[1] ICCPR was signed by Iran on 4 April 1968, ratified on 24 June 1975.

[2] Article 14(3)(d) of the ICCPR

[3] UN Human Rights Committee (HRC), *General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32, para. 10.

[4] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

[5] 2006: Compilation prepared by the Office of the High Commissioner for Human Rights, C/HRC/WG.6/7/IRN/2, p.4; Office of the High Commissioner of Human Rights, *Country and other visits by Special Procedures Mandate Holders since 1998*.

Arbitrary Detention of Lawyers

Wrongfully prosecuted and detained Iranian lawyers include:

- Abdolfattah Soltani, arrested in 2009 and 2011 on charges of co-founding DHRC, endangering national security, and "illegally" accepting award moneys from the Nuremberg International Human Rights Award in 2009. He was sentenced to 18 years in prison which was reduced to 13 years on appeal in 2012;

- Afshin Karampour, Amir Eslami, Mustafa Daneshju, Omid Behrouzi, Farshid Yadollahi, arrested in 2011 and sentenced in 2013 to seven and a half years in prison for spreading propaganda against the state as the administrators of Majzoonban-e-Noor, a Dervish website, and some also as lawyers for Sufi/Dervish clients. Some refused to submit an appeal as a form of protest against unfair trial standards, including inadequate access to counsel. Afshin Karampour has been denied transfer to a medical facility. Amir Eslami and Farshid Yadollahi engaged in a hunger strike in 2012;

- Hassan Sarchahi, arrested in 2010 and sentenced to two years in prison. It is not known if he has been released;

- Javid Houtan Kian, arrested in 2010, questioned for "ties with foreign anti-revolutionary groups" and "the possession of false identity cards," and sentenced to six years in prison for giving an interview with foreign media about his client's situation (an Azeri woman who faces death by stoning). He was released in 2013;

- Kambiz Norouzi, arrested in 2009 for conspiracy against national security, spreading anti-government propaganda and disrupting public order and sentenced to one and a half years in prison. It is unclear whether he has been released;

- Mohammed Seyfzadeh, DHRC co-founder, who was arrested in 2010 for collusion and assembly with intent to disrupt internal security sentenced to two years in prison. He has reportedly not been released and may have been sentenced to an additional term of imprisonment on other charges;

- Mohammed Ali Dadkhah, arrested in 2011 for membership in an organization seeking to overthrow the government, spreading propaganda against the system by having interviews with foreign media and being a co-founder of DHRC. He was sentenced to nine years in prison which was affirmed on appeal in 2012;

- Nasrin Sotoudeh, arrested in 2010 for undermining national security, propaganda against the government and not wearing a hejab. She was sentenced to 11 years in prison which was reduced to six years on appeal in 2011. She engaged in a hunger strike in 2012 and was released in 2013;

- Hemid Valai, detained in 2008 and reportedly tortured while in custody. The charges are unclear. He had been engaged in representing Azerbaijani people. It is not known if he has been released

Denial of Medical Treatment While Imprisoned

Reports indicate that several lawyers in detention have been denied medical treatment. It is reported that Mustafa Daneshju was found unconscious in a prison shower, Mohammad Seifzadeh urgently requires treatment for serious heart disease, and Abdolfattah Soltani and Amir Eslami have health problems requiring treatment. Interpreting the ICCPR, the HR Committee has determined[6] that adequate and timely medical care must be provided to all detainees as

[6] Human Rights Committee, Concluding Observations: Georgia, (2002) UN Doc A/57/40 vol. I 53 para 78(7); Pinto v. Trinidad and Tobago (Communication No. 232/1987) Report of the Human Rights Committee vol. 2 UN Doc A/45/40 p. 69 para 12.7; Kelly v.

part of state duties to ensure the enjoyment by all persons of rights to life (ICCPR Article 6), freedom from torture and other cruel, inhuman or degrading treatment or punishment (ICCPR Article 7) and the right of prisoners to humane treatment (ICCPR Article 10). As stated by the HR Committee, "the State party [to the ICCPR] by arresting and detaining individuals takes the responsibility to care for their life."[7]

Reprisals Against Members of DHRC

In 2001, the DHRC was established by five prominent lawyers: Shirin Ebadi, Mohammad Ali Dadkhah, Mohammad Seifzadeh, Mohammad Sharif and Abdolfattah Soltani. The objectives of the DHRC are (i) defending those accused of political crimes and prisoners of conscience on a *pro bono* basis, (ii) publishing reports on human rights in Iran, (iii) facilitating a dialogue amongst intellectuals and activists, and (iv) providing human rights education.[8] Three of the founding members, Mohammad Ali Dadkhah, Mohammad Seifzadeh and Abdolfattah Soltani, have been imprisoned and banned from practicing law. Abdolfattah Soltani was subjected to abduction and prosecution for representing clients in politically sensitive cases, such as the journalist Akbar Ganji and the family of the Canadian photographer Zahra Kazemi. Mohammad Ali Dadkhah was banned from practicing law for defending a Christian pastor on death row for apostasy. Mohammad Seyfzadeh was banned from practicing law for writing critical letters and signing group statements.

Legal Representation of Minority Groups

In October 2013, the Special Rapporteur on the human rights situation in Iran reported that religious minorities have been increasingly subject to various forms of legislated discrimination, including in employment and education, and often face arbitrary detention and ill-treatment.[9] In this context, the ability of lawyers to defend their clients without hindrance or harassment is critical. Human rights organisations reported cases where lawyers were arrested and prosecuted apparently for representing members of a minority group.[10] These cases deserve further investigation by the Human Rights Council.

Independence of the Iranian Bar Association

In 2012, the Iranian Judiciary drafted a *Bill on Formal Attorneyship on the reorganisation of the Iranian Bar Association* (Bill). The Bill introduces supervision of lawyers by the state and thereby severely threatens the independence of the legal profession. The Bill has been met with serious concerns from Iranian lawyers and international organisations.[11] President Rouhani recently promised that the Bill will be re-evaluated; however, it has not been amended thus far.

The Bill introduces provisions that would contravene requirements set out in the Basic Principles.

Jamaica (2 April 1991) UN Doc CCPR/C/41/D/253/1987 para 5.7; Human Rights Committee 'Concluding Observations: Portugal' (2003) UN Doc A/58/40 vol. I 56 para 83(11); Human Rights Committee 'Concluding Observations: Cambodia' (1999) UN Doc A/54/40 vol. I 57 para 306; Human Rights Committee 'Concluding Observations: Congo' (2000) UN Doc A/55/40 vol. I 43 para 282; Human Rights Committee 'Concluding Observations: Mongolia' (2000) UN D Lantsova v. Russian Federation (26 March 2002) UN Doc CCPR/C/74/763/1997 para 9.2.oc A/55/40 vol. I 49 para 332; Human Rights Committee 'Concluding Observations: Syrian Arab Republic' (2001) UN Doc A/56/40 vol. I 70 para 81(13).

[7] Lantsova v. Russian Federation (26 March 2002) UN Doc CCPR/C/74/763/1997 para 9.2.

[8] Defenders of Human Rights Center, website

[9] Special Rapporteur on the human rights situation in the Islamic Republic of Iran, Report, 4 October 2013, A/68/503.

[10] Special Rapporteur on the human rights situation in the Islamic Republic of Iran Report (A/HRC/2256). September 2013, AI Report on Iran 2013, May 2013; HRW World Report 2014, Iran, January 2014.

[11] For example, the Special Rapporteur on the situation of human rights in Iran stated in his report to the UN Human Rights Council of February 2013 that he "continues to share the International Bar Association's concerns regarding the erosion of the independence of the legal profession and Bar Association in the Islamic Republic of Iran."

- The Bill creates a 'Supervisory Committee' of seven members elected by the Head of the Judiciary. The judiciary is under the purview of the Ministry of Justice and accordingly is not independent. The Bill grants the Committee ownership of the Bar Association's assets and authorizes the Committee to control the admission and examination of trainee lawyers and the awarding and revocation of licenses to practice law.[12] This provision would contravene the principle that lawyers must be free to form self-governing organisations, with an executive elected by its members and operating free from external interference.[13]

- The Bill would empower "competent bodies"—an undefined term—to suspend lawyers from practising.[14] The Basic Principles require that all disciplinary proceedings against lawyers be determined by an impartial disciplinary committee established by the legal profession, or an independent authority or court, and be subject to judicial review.[15]

- The Bill stipulates that a member of the Judiciary shall chair each branch of the Disciplinary Court for Attorneys and the Disciplinary Court of Appeal for Attorneys[16] and the Head of the Judiciary would be empowered to approve the appointment of the Disciplinary Prosecutor for Attorneys.[17] These measures would place the Bar Association under effective control of government authorities.

Conclusion

Abdolfattah Soltani, Afshin Karampour, Amir Eslami, Mustafa Daneshju, Omid Behrouzi, Farshid Yadollahi, Javid Houtan Kian, Mohammed Ali Dadkhah, Hemid Valai and Mohammed Seyfzadeh are believed to be still in prison. It is now known whether Hassan Sarchahi or Kambiz Norouzi has been released. LRWC, ALRC and L4L recommend that all be released immediately.

LRWC, L4L and the ALRC urge the Human Rights Council to call on Iran to:

1. Allow a visit and investigation by the Special Rapporteur on the Independence of Judges and Lawyers;
2. Ensure the release of any of the following lawyers still in prison: Abdolfattah Soltani, Afshin Karampour, Amir Eslami, Mustafa Daneshju, Omid Behrouzi, Farshid Yadollahi, Kambiz Norouzi, Mohammed Seyfzadeh, Mohammed Ali Dadkhah; Javid Houtan Kian, Hemid Valai, Hassan Sarchahi and Kambiz Norouzi.
3. Ensure the immediate release of all other lawyers currently imprisoned for discharging their professional duties;
4. Enable the DHRC to continue with its activities and to safeguard the personal and professional security freedom of all DHRC members;
5. Respect Iran's international law obligations to provide adequate medical treatment for detained lawyers and other prisoners;
6. Bring legislation and practice in Iran into conformity with Iran's international legal obligations under the UDHR and ICCPR to protect rights to equality before the law and equal access to the protection of the law, liberty, freedoms of expression and association, prisoners' rights to humane treatment and rights to receive and provide legal representation;
7. Amend the draft Bill on Formal Attorneyship in consultation with the Bar Association of Iran to: a) ensure that the independence of the bar is adequately protected; b) comply with the Basic Principles; and, c) comply with the duty under the ICCPR to ensure that all persons have access to independent lawyers in cases involving the determination of their rights.

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[12] Draft Bill on Formal Attorneyship, Article 122
[13] Basic Principles Article 24,
[14] Draft Bill on Formal Attorneyship Article 48
[15] Basic Principles, Article 28.
[16] Draft Bill on Formal Attorneyship Articles 90 and 93